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VIA eFILING

Rosemary Chiavetta, Secretary
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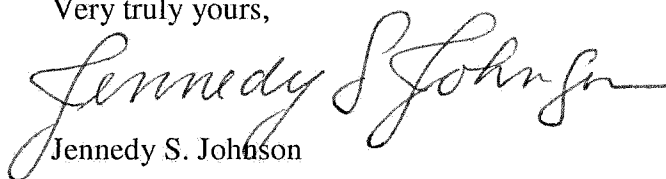
**Re: Petition of NRG Energy, Inc. for Implementation of
Electric Generation Supplier Consolidated Billing
Docket No. P-2016-2579249**

Dear Secretary Chiavetta:

Enclosed for filing, on behalf of **PECO Energy Company**, are the **Reply Comments to the Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing** (the "Reply Comments") in the above-captioned proceeding.

Copies of the Reply Comments are being served upon all parties listed in the attached Certificate of Service.

Very truly yours,



Jennedy S. Johnson

c: Per Certificate of Service (w/encls.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF NRG ENERGY, INC. FOR :
IMPLEMENTATION OF ELECTRIC : Docket No. P-2016-2579249
GENERATION SUPPLIER :
CONSOLIDATED BILLING :**

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Reply Comments of PECO Energy Company to the Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing** on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: February 22, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of NRG Energy, Inc. for :
Implementation of Electric Generation : **Docket No. P-2016-2579249**
Supplier Consolidated Billing :

**REPLY COMMENTS OF PECO ENERGY COMPANY
TO THE PETITION OF NRG ENERGY, INC. FOR
IMPLEMENTATION OF ELECTRIC GENERATION
SUPPLIER CONSOLIDATED BILLING**

Pursuant to 52 Pa. Code § 5.61 and the December 24, 2016 notice¹ published in the Pennsylvania Bulletin by the Pennsylvania Public Utility Commission (“Commission”) in the above-referenced docket, PECO Energy Company (“PECO” or the “Company”) submits its Reply Comments to the Petition of NRG Energy, Inc. (“NRG”) for Implementation of Electric Generation Supplier (“EGS”) Consolidated Billing (“Petition”).

On January 23, 2017, PECO filed its Comments and Answer in Opposition to the Petition (“PECO Comments”). In those Comments, PECO demonstrated that NRG’s proposal for Supplier Consolidated Billing (“SCB”) was contrary to the express provisions of the Pennsylvania Public Utility Code (the “Code”), failed to address critical existing consumer protections, and left unresolved numerous uncertainties regarding the design, cost and implementation of SCB. PECO also explained that NRG’s efforts to justify its proposal based upon an alleged “stagnant” retail electricity market in Pennsylvania were flatly contradicted by the Commission’s own conclusions regarding the success of the Electricity Generation Customer Choice and Competition Act of 1996, 66 Pa.C.S. § 2801 *et seq.* (the “Competition Act”). As

¹ 46 Pa. Bull. 8154.

Chairman Brown explained at the Commission’s commemoration of the twentieth anniversary of the Competition Act on December 8, 2016, Pennsylvania remains at the forefront of retail electric competition nationwide, with millions of customers shopping and more than fourteen months of sustained growth.²

Sixteen other comments were filed by stakeholders (“Commenters”) in response to the Petition.³ Of those sixteen Commenters, twelve – including the entities representing residential, commercial and industrial customers throughout the Commonwealth – strongly opposed the Petition for many of the same reasons as PECO. Thus, various Commenters agreed with PECO that NRG’s SCB proposal was not legal,⁴ would harm customers,⁵ and would not benefit customers or the competitive retail electricity market.⁶

² PECO Comments at 2 (citing Press Release, PUC Marks 20th Anniversary of Electric Competition in PA; New Survey Shows High Levels of Customer Awareness and Satisfaction with Electric Choice, Touts 14 Consecutive Months of Growth, Announces Upgrades to Electric Shopping Website PAPowerSwitch, (December 8, 2016), http://www.puc.pa.gov/about_puc/press_releases.aspx?ShowPR=3794).

³ The sixteen Commenters are Office of Consumer Advocate (“OCA”); Office of Small Business Advocate (“OSBA”); Duquesne Light Company (“Duquesne”); PPL Electric Utilities Corporation (“PPL”); Citizens’ Electric Company and Wellsboro Electric Company (“Citizens/Wellsboro”); the FirstEnergy Companies (“FirstEnergy”), composed of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company; UGI Utilities, Inc. – Electric Division (“UGI”); Energy Association of Pennsylvania (“EAP”); Coalition of Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”); Pennsylvania AFL-CIO Utility Caucus (“AFL-CIO”); Tenant Union Representative Network et al. (“TURN”); the Industrials, composed of the Met-Ed Industrial Users Group, the Philadelphia Area Industrial Energy Users Group, the Penelec Industrial Customer Alliance, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors (“Industrials”); Direct Energy Services, LLC (“Direct”); WGL Energy Services, Inc. (“WGL”); the Retail Energy Supply Association (“RESA”); and Calpine Energy Solutions, LLC (“Calpine”). Several Commenters also filed Answers in response to the Petition.

⁴ See, e.g., PPL Comments at 3, 5; FirstEnergy Comments at 3-4; Citizens/Wellsboro Comments at 3; Duquesne Comments at 8-12; EAP Comments at 8-12; TURN Comments at 9-10; see generally OCA Comments (questioning the “consistency” of NRG’s proposal with Code provisions).

⁵ See, e.g., OCA Comments at 15-16 (NRG examples of SCB use raise significant consumer protection issues and questions under Commission regulations and the Code); TURN Comments at 5-6 (discussing defined statutory service obligations and delay associated with EGSs redirecting low-income customers to EDCs); PPL Comments, at 15-16 (noting that several customer protections under the Code and Commission regulations apply only to EDCs and associated issues with enforcement against EGSs).

⁶ See, e.g., OCA Comments at 9-10 (“NRG has not identified or demonstrated how SCB would improve the Pennsylvania electric retail market”); Industrials’ Comments, at 4 (NRG “fails to name any substantive benefits to

Three EGSs – RESA, Direct, and WGL – expressed support for NRG’s Petition, while the only other EGS Commenter – Calpine – devoted the majority of its Comments to its concerns with NRG’s Petition, observing that any implementation of SCB must be done with “extreme care” to avoid creating an “uneven playing field for competitive EGSs.”⁷ Notably, **not one** EGS committed, in its comments, to actually using SCB.

For the reasons set forth in its Comments, PECO urges the Commission to dismiss NRG’s Petition as a matter of law and policy.⁸ In these Reply Comments, PECO responds to issues raised by the other Commenters and respectfully reiterates its request that the Commission dismiss NRG’s Petition without further proceedings or, at a minimum, set the Petition for evidentiary hearings before an Administrative Law Judge where NRG would have the burden of presenting evidence and proving that its SBC proposal is lawful and in the public interest.

I. NRG’S PETITION IS CONTRARY TO THE PUBLIC UTILITY CODE AND THE PURPOSE OF THE COMPETITION ACT AND MUST BE DISMISSED

In their Comments to the Commission, both RESA and WGL opine that SCB is supported by the Commission and consistent with the provisions and purposes of the Competition Act. To the contrary, PECO submits that SCB is entirely inconsistent with existing statutes and regulations, as well as with important, sound public policy considerations that prompted their enactment.

the ratepayers or even to the shopping experience in general”); FirstEnergy Comments, at 12-13 (discussing findings of Connecticut Public Utilities Regulatory Authority that switching primary customer contact to EGSs was “not practical”); PPL Comments at 19 (discussing “destructive competition” from NRG’s proposal and harm to smaller EGSs); Calpine Comments at 7 (discussing disparate treatment of EGSs using SCB).

⁷ Calpine Comments at 3.

⁸ PECO Comments at 9-10.

A. The Commission Has Neither Previously Approved SCB Nor Made A Definitive Finding On Its Legality

In its Comments, WGL states that the Commission has previously answered in the affirmative the threshold question of *whether* SCB should be implemented and that it need now only “focus on the details of *how* SCB should be implemented.”⁹ In support of its assertion, WGL cites to the Commission’s Retail Market Investigation and its resulting *Tentative* and *Final End State Orders*.¹⁰ In essence, WGL contends that because SCB was discussed as a possible step in developing the competitive market in Pennsylvania, utilization of SCB has been preapproved. WGL is simply wrong.

The Commission’s discussion of SCB in the *Tentative End State Order* (which adopted the Office of Competitive Market Oversight’s (“OCMO’s”) proposed end state of default service) was just that – a tentative order administratively placed before the public for comment.¹¹ Based on its consideration of public comments, the Commission did not approve the use of SCB in the *Final End State Order*. Instead, the Commission opined that while “SCB *might* someday play a role as a billing option,” it could only be implemented “after extensive work and expense by many entities.”¹² Noting “substantial concerns” regarding the use of SCB, the Commission specifically “revise[d] what [it] proposed in the *Tentative Order*” with respect to SCB implementation.¹³

⁹ WGL Comments at 1-2.

¹⁰ WGL Comments at 2-3 (citing Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service, Docket No. I-2011-2237952 (Order entered November 8, 2012) (“*Tentative End State Order*”) and Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service, Docket No. I-2011-2237952 (Order entered February 15, 2013) (“*Final End State Order*”).

¹¹ *Tentative End State Order* at 25-28.

¹² *Final End State Order* at 66-67 (emphasis added).

¹³ *Id.* at 67-68.

Notably, the Commission did not address the legality of SCB in the *Final End State Order*. As discussed in PECO’s Comments and the comments of other stakeholders,¹⁴ Sections 2807(c) and (d) of the Code unambiguously state that the electric distribution company (“EDC”) shall provide the billing and customer service functionalities that NRG would transfer to SCB-participating EGSs.¹⁵ In fact, a majority of the non-EGS Commenters questioned whether the Commission had the statutory authority to impose SCB in light of Sections 2802(16) and (17) (public purpose served by regulated utility maintaining transmission and distribution, including consumer protections and services); 1301 (rates must be just and reasonable and in conformity with orders and regulations); 1501 (public utility must furnish and maintain reasonable service); and the customer protection provisions of Chapters 14 and 56.¹⁶ Given the express statutory provisions highlighted by the non-EGS Commenters, PECO respectfully submits that the important functions assigned to EDCs by statute cannot be transferred to EGSs by the Commission as part of SCB absent a change in law.¹⁷

B. RESA, Direct, And WGL Misconstrue The Purpose Of The Competition Act

In its Comments, RESA claims that SCB “is an important and necessary evolution of the retail electricity marketplace which will allow EGSs to begin to deliver on the original promises of technological and services-related innovation that were an integral part of the [Competition

¹⁴ See n. 4 *supra*.

¹⁵ 66 Pa.C.S. §§ 2807(c), (d).

¹⁶ See PECO Comments at 7-8 & n. 4 *supra*.

¹⁷ Cf. *Dauphin Cty. Indus. Dev. Auth. v. Pa. Pub. Util. Comm’n*, 123 A.3d 1124, 1133-34 (Pa. Commw. Ct. 2015) (“The legislature knows the difference between a default service supplier and an Electric Generation Supplier.”); see also *Norfolk S. Ry. Co. v. Pa. Pub. Util. Comm’n*, 875 A.2d 1243, 1249 (Pa. Commw. Ct. 2005) (explaining that “the PUC has only those powers expressly conferred on it by statute or those powers which are necessarily implied from its express powers”) (citing *Peoples Nat. Gas Co. v. Pa. Pub. Util. Comm’n*, 664 A.2d 644 (Pa. Commw. Ct. 1995)).

Act].”¹⁸ Similarly, Direct contends that SCB will allow EGSs to bill for a “much wider range of products and services,” and WGL asserts that its ability to provide such services “is greatly restricted” without SCB.¹⁹ In short, RESA, Direct and WGL seemingly endorse NRG’s view that the Commission should be seeking to create a competitive marketplace in which it will not be so “difficult for EGSs to establish themselves as legitimate, reliable businesses capable of offering customers a value proposition beyond price.”²⁰

That some EGSs would like to entice customers to buy additional products and services is not surprising. That, however, is not the goal of the Competition Act. In fact, the statutory language of the Competition Act makes plain that the legislature’s overriding intent was to achieve lower electricity prices for customers through generation-supply competition.²¹ For example, the Act’s Declaration of Policy specifically notes that the *rates* for electricity in the Commonwealth were higher than the national average and that competitive market forces were more effective than economic regulation in controlling the *cost* of generating electricity.²² Simply put, lowering the price of electricity was the objective of the Competition Act.

To ensure that customers receive the full benefits of competition, the Competition Act also *requires* EDCs and EGSs to provide “information to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.”²³ The price-to-compare (“PTC”), which by Commission regulation must be a separate line item on a customer’s bill, is a prominent benchmark for customers navigating the competitive electric supply

¹⁸ RESA Comments at 1.

¹⁹ Direct Energy Comments at 3; WGL Comments at 3.

²⁰ Pet., ¶ 46.

²¹ See generally FirstEnergy Answer at 1-3; TURN Comments at 9-10.

²² 66 Pa.C.S. §§ 2802(4), (5).

²³ See 66 Pa.C.S. § 2807(d)(2).

marketplace in Pennsylvania.²⁴ While RESA denigrates the PTC as part of its arguments in favor of SCB,²⁵ the clarity with which the Competition Act requires transparency and uniformity stands in stark contrast to the lack of statutory support for SCB and undermines the EGS Commenters' claims that the Code can be construed to authorize SCB.²⁶ Both the clear language and the objectives of these statutes and regulations would be undermined by such "innovative" products as flat-rate pricing highlighted by NRG and EGS Commenters, in which charges for generation, transmission and distribution service could be combined into a single amount on a customer's bill.²⁷

As a strong supporter of competitive energy markets, PECO believes that competition can deliver real choice, innovation, and value to customers. The Commission has established that nearly all Pennsylvania electric customers know that they can choose an EGS.²⁸ For their part, EGSs have been able to communicate the value of savings, fixed rates, incentives, and other benefits to customers, and there is no need for a "disruptive" billing construct that, as Calpine suggests, could actually **reduce** competition by EGSs to deliver innovative products.²⁹

C. The EGS Commenters Have Failed To Establish That NRG's Petition Is Timely

While RESA, Direct and WGL lament the state of the market,³⁰ every non-EGS Commenter disagrees, pointing to Pennsylvania's growing and successful retail market.³¹ As

²⁴ See 52 Pa. Code § 54.187(c); see also 52 Pa. Code § 54.188(f) (requiring that revised PTCs be posted "to enable customers to make an informed decision about electric generation supply options.").

²⁵ RESA Comments at 9-10.

²⁶ Cf. 1 Pa.C.S. § 1932(b) ("Statutes in pari materia shall be construed together, if possible, as one statute.").

²⁷ See PECO Comments at 17-18.

²⁸ *PA PowerSwitch Attitudes and Usage Report*, October 2016, at 8.

²⁹ *Id.* at 10; Calpine Comments at 3.

³⁰ RESA Comments at 5, 7; Direct Comments at 2, 4; WGL Comments at 2-3.

discussed above, in December 2016 the Commission celebrated the 20th anniversary of the Competition Act, and Chairman Brown noted that Pennsylvania remains a national leader in retail competition. In fact, the Annual Baseline Assessment of Choice in Canada and the United States recently ranked Pennsylvania second in the United States and third overall in the residential retail market category.³²

As discussed in PECO's Comments, the EDCs have implemented many improvements to stimulate retail electric shopping and continue to work with the Commission on a spectrum of retail market enhancements. These market-enhancement measures – many of which were developed at significant customer expense – should be given full opportunity to positively impact customer shopping. Indeed, in the *Final End State Order* the Commission stated, “When and how we proceed with SCB will depend, in part, on the results of the changes we are proposing to the utility consolidated bill...”³³ PECO agrees with the other Commenters that the Commission should allow these changes to take root before entertaining any further alterations – especially those that come at the expense of customers and not the EGSs.

II. THE EGS COMMENTERS FAILED TO DEMONSTRATE THAT SCB WOULD PRODUCE ANY ACTUAL BENEFITS

A. No Commenter Has Established That Any Actual Benefits Will Accrue To The Market Or To Customers From SCB

In their Comments, RESA, Direct and WGL cite the same purported benefits that NRG discussed in its Petition – increased contact with customers and innovative products and

³¹ See PPL Comments at 9-10; UGI Comments at 2; OSBA Comments at 5-6; FirstEnergy Answer at 15-16; Citizens/Wellsboro Comments at 1; Industrials Comments at 2; Duquesne Comments at 14-16; CAUSE-PA Answer at 8, 11, 30; EAP Comments at 4-6; OCA Comments at 6.

³² Studies available at: <http://defgllc.com/publication/abaccus-2015-annual-baseline-assessment-of-choice-in-canada-and-the-united-states/> (2015) and <http://defgllc.com/publication/abaccus-2014-annual-baseline-assessment-of-choice-in-canada-and-the-united-states/> (2014).

³³ *Final End State Order* at 68.

services.³⁴ WGL states that SCB-participating EGSs could offer such “value added” services as appliance or service maintenance programs and security services, and would have improved data presentation for customers through online tools.³⁵ Direct alleges that SCB would encourage the development of value-added products and services and enhance the ability of EGSs to “communicate directly with their customers,”³⁶ while RESA asserts that “it is simply not possible to predict today the innovation that will occur tomorrow if SCB is adopted.”³⁷

In contrast to such wishful thinking, FirstEnergy and TURN presented the 2014 findings of the Connecticut Public Utilities Regulatory Authority (“PURA”), which concluded that “there does not appear to be real benefits to ratepayers” from SCB.³⁸ The *PURA Decision* was a statutorily mandated report to Connecticut’s General Assembly on the costs and benefits of SCB implementation. Those who supported SCB in that proceeding made the same arguments advanced here, namely that SCB implementation would strengthen the relationship between customer and supplier and would generate a wider range of innovative products and services, rate plans, and billing options.³⁹ In response, the PURA specifically found that: 1) SCB does not appear to provide real benefits to customers; 2) supplier interest in SCB is lacking; 3) EDC charges are complex; 4) SCB would likely increase costs to the EDCs and EGSs (and ultimately to customers); and 5) other options exist for suppliers to achieve the same or similar results.⁴⁰

³⁴ RESA Comments at 5-11; Direct Comments at 3-4; WGL Comments at 3-4.

³⁵ WGL Comments at 3-4.

³⁶ Direct Comments at 3-4.

³⁷ RESA Comments at 7-8.

³⁸ FirstEnergy Answer at 12-13; TURN Comments at 11 (citing *PURA Review of the Billing of All Components of Electric Service by Electric Suppliers*, CT PURA Docket No. 13-08-15 at 7 (Decision entered August 6, 2014), [http://www.dpuc.state.ct.us/dockcurr.nsf/0/4a2f8ff062aae30d85257d2c005be6fb/\\$FILE/FINAL130815%20Revised%20Draft.docx](http://www.dpuc.state.ct.us/dockcurr.nsf/0/4a2f8ff062aae30d85257d2c005be6fb/$FILE/FINAL130815%20Revised%20Draft.docx) (“*PURA Decision*”)).

³⁹ *PURA Decision* at 6.

⁴⁰ *Id.* at 7.

Indeed, many of these same concerns – as well as the availability of other methods of communicating and billing available to EGSs – were highlighted by PECO, FirstEnergy, the OCA, the Industrials and TURN in their initial Comments.⁴¹

B. The Commenters Have Demonstrated That Serious Harm To Both Customers And The Market Is Likely To Occur If NRG’s Proposal Is Implemented

The failure of the EGS Commenters and NRG to identify realistic, tangible benefits that would flow from SCB implementation is especially glaring in light of the certain harm to customers. PECO’s Comments went into great detail about the harms to dual-commodity customers and low-income customers, and raised important issues surrounding payment priority, bill inserts, bad-debt risk, call-center impacts, and customer education.⁴² Even though PECO addressed those issues at length in its Comments and Answer, a few points bear repeating.

i. Customer Impacts

Most Commenters agreed that the impact on customers is the most significant issue with the implementation of SCB. The overarching concern is shifting control of important customer service functions – such as billing, call center, complaint resolution, and termination of service protocols – from a fully regulated EDC to a largely unregulated EGS.⁴³ The resulting dual points of contact will cause customer confusion and frustration at best as well as delays and increased costs in responding to service concerns, emergencies, and restoring service at worst.⁴⁴

These Commenters focused especially on how the customer protections provided in Chapter 14 of the Code and Chapter 56 of the Commission’s regulations might be undermined

⁴¹ PECO Comments at 14-31; FirstEnergy Answer at 12-13; OCA Comments at 9-10; Industrials’ Comments at 4; TURN Comments at 11.

⁴² PECO Comments at 9-31.

⁴³ See e.g. Calpine Comments at 3-4; OCA Comments at 14-22; PECO Comments at 9-29.

⁴⁴ PECO Comments at 15-29; OCA Comments at 14-16; PPL Comments at 10-16; FirstEnergy Answer at 5-9; TURN Comments at 5-6; Industrials’ Comments at 3-4.

by SCB.⁴⁵ These statutory and regulatory provisions address issues such as customer complaint handling, service quality, collections and billing standards, termination of service protocols and notices, universal service, and reporting obligations. These Commenters agree that the impact of SCB on these important customer service and consumer protection issues must be understood fully before any decision can be made on the merits of SCB.⁴⁶ For example, CAUSE-PA argues that the protections afforded customers under these provisions apply to EDCs, and not to EGSs, so it is unclear how the Commission could ensure that these protections continue under SCB.⁴⁷ Even if Chapter 14 could be extended to SCB-participating EGSs, separating out portions of these protections and standards will likely increase the costs of maintaining current levels of consumer protection.⁴⁸ PECO shares these concerns.

The potential impacts of SCB on low-income and payment-troubled customers are even more disturbing. As TURN explained, utilizing EGSs as the “de facto contact” for billing inquiries and complaints creates a significant risk that such customers will incur unnecessary and unwarranted service interruptions.⁴⁹ Additionally, CAP enrollment – which NRG proposes would be handled by the EDC – often results from a billing or payment call, which NRG proposes would be addressed by the SCB-participating EGSs.⁵⁰ As TURN points out, the Petition also failed to address other issues important to these customers, such as LIHEAP payment receipt and processing, CAP arrearage forgiveness, and availability of payment plans

⁴⁵ 66 Pa.C.S. § 1401 *et seq.*; 52 Pa. Code § 56.1 *et seq.* PECO notes that in 2014, additional changes were made to Chapter 14 that the Commission is in the process of incorporating into Chapter 56 through a rulemaking proceeding.

⁴⁶ PECO Comments at 20-26; CAUSE-PA Comments at 2; OCA Comments at 14-16; PPL Comments at 10-16; FirstEnergy Comments at 6-9.

⁴⁷ CAUSE-PA Comments at 25-26.

⁴⁸ Duquesne Comments at 18.

⁴⁹ TURN Comments at 5-6.

⁵⁰ PECO Comments at 24.

and deposits.⁵¹ PECO shares these concerns about service to low-income and payment-troubled customers.

ii. NRG's Proposed Block Mechanism

NRG proposed an “Enrollment/Drop Block Mechanism” that would “prevent a customer from switching to another EGS or the EDC until that customer has paid his or her past due bill in full.”⁵² The legality of forcing a customer to take electric service from a largely unregulated entity at an unregulated price is highly questionable; indeed, the entire concept of “locking up” a customer is contrary to the fundamental principles of customer choice.⁵³ Calpine, PPL, and the Industrials also commented on the potential of this provision to trap customers in unfavorable terms, conditions, and rates.⁵⁴ As Calpine points out, the only available recourse for an EGS to recoup unpaid balances is traditional collection methods, not an unsupportable block mechanism (to which non-SCB-participating EGSs would not have access) that would shift billing risk and responsibility to customers.⁵⁵ PECO agrees with and joins these additional points about NRG’s proposed blocking mechanism.

iii. NRG's Flat Rate Bill Proposal

In its Petition, NRG discusses using SCB as a vehicle to offer flat bill plans, which would display EDC charges on the SCB as a single, combined line item, and other EGS Commenters embraced this idea as the type of “innovation” they would seek to offer.⁵⁶ The remaining

⁵¹ TURN Comments at 5-8; PECO Comments at 24-26.

⁵² Pet. ¶ 37.e.

⁵³ PECO Comments at 19-20; Calpine Comments at 7; PPL Comments at 13-14; Industrials’ Comments at 4-5; TURN Comments at 7; CAUSE-PA Answer at 28-29.

⁵⁴ Calpine Comments at 7; PPL Comments at 13-14; Industrials’ Comments at 4-5; *see also* Duquesne Comments at 23 (block proposal makes no provision for customers who have been “slammed”).

⁵⁵ Calpine Comments at 7-8.

⁵⁶ Pet. ¶¶ 37, 50; RESA Comments at 7; WGL Comments at 4.

Commenters were united in explaining that this “innovation” is plainly contrary to Pennsylvania law and the Commission’s regulations.⁵⁷ The proposal would impede the customer’s ability to make an apples-to-apples comparison of the portion of the bill attributable to delivery service when shopping for electric supply, to determine how the bill would be affected by a customer’s conservation, or to even verify that the rate charged is correct. With respect to WGL’s contentions regarding budget certainty, PECO points out that customers seeking certainty can enroll in existing budget bill programs to achieve the same result.

iv. NRG’s Purchase of Receivables Proposal

In its filing, NRG also proposes a Purchase of Receivables (“POR”) program whereby the SCB-participating EGS would purchase 100% of the EDC’s receivables at no discount.⁵⁸ NRG would couple this purchase of receivables with a requirement that the EDC terminate service to customers who fail to pay the SCB-participating EGS.⁵⁹ Both FirstEnergy and the AFL-CIO point out that under EDC POR programs, the EDC purchases the generation service receivable, which then becomes a receivable owed to the EDC.⁶⁰ Failure to pay then provides the EDC with justification to terminate customer service. Notably, however, the process cannot lawfully work in reverse, because when the SCB-participating EGS purchases the EDC receivable, the customer owes nothing to the EDC. Under those circumstances, the EDC cannot terminate service for nonpayment because it has been paid in full.

⁵⁷ See PECO Comments at 17-18; OCA Comments at 19; Calpine Comments at 6; PPL Comments at 17; OSBA Comments at 7; Industrials’ Comments at 2-3; Duquesne Comments at 22; AFL-CIO Comments at 3; CAUSE-PA Answer at 26; RESA Answer. The Commenters cited the following provisions of the Code and regulations: 66 Pa. C.S. §§ 1303, 1305, 2807(c); 52 Pa. Code §§ 54.4, 56.15, 69.251(c)(1)(i).

⁵⁸ Pet. ¶ 39.

⁵⁹ *Id.* at ¶¶ 29-30.

⁶⁰ FirstEnergy Comments at 5-6; AFL-CIO Comments at 3-4.

v. *Increased Administrative Burdens*

NRG's proposal to shift certain customer service and billing obligations and service termination protocols from EDCs to EGSs also has the potential to vastly expand the Commission's regulatory burden. As PPL noted, over 400 EGSs are currently licensed to operate in Pennsylvania and, if SCB is implemented, the Commission must have the necessary capabilities to oversee participating EGSs' conduct.⁶¹ As the OCA explained, even if only six suppliers choose SCB, "it would practically double the number of call centers that the Commission staff must work with in meeting the requirements of Chapter 14 and Chapter 56."⁶² In assessing the impacts of NRG's proposal, the Commission should also consider the likelihood that SBC could increase the size and complexity of the Commission's obligations and the financial and staffing implications of that expanded responsibility.

III. IF THE COMMISSION DECLINES TO DISMISS THE PETITION OUTRIGHT, THE MATTER MUST BE REFERRED TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE FOR FULL EVIDENTIARY PROCEEDINGS

In their Comments, RESA, Direct and WGL support the comments-only process and expedited timeline proposed by NRG.⁶³ If the Commission does not summarily dismiss the Petition – as it should – then principles of due process require a fair and reasonable opportunity to explore and assess the complex and difficult issues raised by NRG's proposal and its lack of specificity through the submission of sworn testimony, hearings, and briefings. As the proponent of SCB, NRG will have the burden of proof in such proceedings and the burden of going forward

⁶¹ PPL Revised Comments at 20.

⁶² OCA Comments at 17.

⁶³ WGL Comments at 4; RESA Comments at 12-13; Direct Comments at 4.

with the evidence.⁶⁴ Accordingly, in any proceeding initiated by the Commission, NRG should present its case-in-chief before other parties are required to respond.

As various Commenters have observed, the approval and implementation of SCB has far-reaching impacts on processes vital to the provision of electric distribution service and would require changes to call-center procedures, complaint response and processing, scripting, bill inserts and Commission-required education, termination procedures, CAP enrollment, and collections. For example, PPL observed that, contrary to NRG's assertion, many issues of material fact underlie the Petition that cannot be addressed through a comment and stakeholder process.⁶⁵ Duquesne and AFL-CIO also agreed that issues as complex and important as those implicated by SCB cannot be expedited.⁶⁶ As AFL-CIO observed, if the Commission believes that consideration of the impact of SCB on utility rates and customer service is important, the Commission must develop an evidentiary record to support its conclusion on those issues.⁶⁷ In this context, the comment-only process not only fails to provide parties the required due process and a record upon which the Commission may rule; it is likely to prevent the Commission from ensuring that such extraordinary changes to the customer service model in Pennsylvania are implemented in a manner that first does no harm to the very competitive markets the EGSs seek to enhance. Therefore, if the Petition is not denied outright, the Commission should refer the

⁶⁴ 66 Pa.C.S. § 332(a); 52 Pa. Code § 5.242(a).

⁶⁵ *Id.*

⁶⁶ Duquesne Comments at 23-24; AFL-CIO Comments at 4-6.

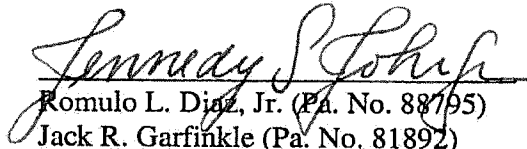
⁶⁷ AFL-CIO Comments at 6 (citing 66 Pa.C.S. § 703(e) and *ARIPPA v. Pa. Pub. Util. Comm'n*, 792 A.2d 636 (Pa. Commw. Ct. 2002)).

Petition to the Office of Administrative Law Judge (“OALJ”) for the presentation of testimony from all interested parties.⁶⁸

IV. CONCLUSION

WHEREFORE, for the foregoing reasons – as well as for those set forth in the previous Comments and Answer filed by PECO – the Petition of NRG for the Implementation of Electric Generation Supplier Consolidated Billing should be denied.

Respectfully submitted,



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⁶⁸ PECO also notes that, as discussed by EAP, even if the Commission were to approve NRG’s Petition, the establishment of broad, industry-wide policies requires adoption of implementing regulations. See EAP Comments at 14-15 (citing *Dep’t of Env’tl. Res. v. Rushton Mining Co.*, 591 A.2d 1168 (Pa. Commw. Ct. 1991)).